IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 213 OF 1994

1. Jagannath Sambhaji Hol
2. Mahadev Jagannath Hol
3. Ganpat Jagannath Hol ..Appellants

versus

1. Aziz T. Patel
2. National Insurance Co. Ltd. ..Respondents

Mr. T. J. Mendon for the Appellants.
Mr. P. Mahadik for S.R. Singh for the Respondents No.2.

CORAM : D. G. DESHPANDE,J.

DATE : 13TH JANUARY,2005

ORAL ORDER :

1. Heard Counsel for the appellants and the respondent no.2.

2. Shankar Jagannath Hol was the victim in accident. The appellant No.1 is the father of the said Shankar Jagannath Hol and Nos. 2 and 3 are the brothers. This incident occurred on 19.6.1982. He was walking by the road from Shahapur village to Asangaon Railway Station. At that time a truck

bearing No.MWT-2839 which was being driven in rash and negligent manner came from opposite side on its journey to Nashik. The truck was going by wrong side and had dashed against Shankar. He was crushed under the tyres of the truck and died on the spot. The appellants therefore filed claim application before the MACT, Thane, demanding paltry sum of Rs.1 lac in all. MACT, thane, granted only Rs.30,000/= with interest at 10% per annum from July 1988. It is this order that is challenged by the appellants.

3. The deceased was 24 years of age at the time of accident. He was B.E. (Civil). He was working with CIDCO till before one month of the accident. Appellants /Claimants had examined P.W. 2 Jayant Mahadeo Kamale, a Field Officer from CIDCO, New Bombay. He stated that deceased joined CIDCO as Junior Engineer on 8.12.1981. He was drawing basic salary of Rs.500/= per month with special pay of Rs.60/- per month and he stated that the gross salary of deceased in May 1982 might be Rs.1,500/- to Rs.2,000/- per month but the deceased tendered his resignation from CIDCO on 13.6.1982 and it was accepted with effect from 12.5.1982. The accident took place on 19.6.1982 and the witness P.W. 2 has stated that the deceased resigned on the ground of better prospects.

4. MACT while holding that the driver of the vehicle was rash and negligent and the the deceased died on account of rash and negligent driving, considered the aspect of compensation in paragraph 12, which reads as under:

> "It can be seen from the testimony of Applicant No.3, who has examined himself at Exh. 18 that he himself has been serving as a Police Constable since 1983. The accident has taken place on 19th June 1982. Therefore, the dependency of the Applicant No.3 on the income of the deceased would be for a period of 6 months only. So also the Applicant No.2 had joined service as Police Constable in 1987 and he is in service till today. His dependancy on the income of the deceased would then be for a period of 4 and 1/2 years (June 1982 to December 1986) i.e. for 54 months. The Applicant No.1 who is the father of deceased Shankar was aged 50 years in 1982. Considering the life span in these days, it can be safely said that the deceased would have continued to help him financially for another period of 20 years. Now so far as the dependancy is concerned, it has to be borne in mind that the applicant have agricultural lands

admeasuring 4 1/2 acres and 2 1/2 acres of which is Bagayat land. In the light of this evidence, it would be proper to hold that the deceased would have helped financially to the Applicants by giving each one of them Rs.100 per month in addition to the agricultural income that the applicants were then getting and the applicants admittedly are still getting. On this basis yearly dependancy of Applicant no.1 comes to Rs.1,200 (100x12). In this case a multiplier of 20 needs to be adopted and the applicant No.1 would then be getting a compensation of Rs.24,000/- (Rs.1200 x20). So far as the Applicant No.2 is concerned, we have found that he was dependant on the income of the deceased only for a period of 4 1/2 years i.e. 54 months at the rate of Rs.100 per month. His dependancy for 54 months comes to Rs.5,400 (100 x54). So for as the applicant no.3 is concerned, his dependancy has to be considered only for a period of 6 months at the rate of Rs.100 per month and he would be then entitled to get Rs.600 as compensation (100x6). Thus the applicants would be jointly entitled to get a total compensation of Rs.30,000 (Rs.24,000+5400+600). The Applicants would

also be entitled to get as costs to the extent of their claim allowed from the Opponents."

It appears from the aforesaid reasonings that the trial court has not at all taken into consideration the loss of major adult qualified and earning member of the family i.e. son of the appellant NO.1 because of the ghastly accident. The tolerable emotional impact that could have been there on the father, also not taken into consideration the prospects which the deceased at there in his career as a Civil Engineer and also not taken into consideration that even though he was having a good job in CIDCO as a Junior Engineer he resigned for better prospects. He had a call from Gulf as stated by the brother of the deceased.

5. In fact the applicants could have claimed more compensation from the respondents because of the loss of a qualified young boy but they restricted their claim to Rs.1 lac. But MACT without considering the aforesaid important aspects of the matter granted only Rs.30,000/= multiplier of 20 years were applied but the findings of the court that because the father had certain land, dependancy of the father could be Rs.100/- per month, is without any basis.

6. It is true that the claimants had not classified their claim under different heads for mental shock, loss of dependancy, loss of future prospects, etc. but court could not shut its eyes to the impact of accident on family. The calculation of Rs.24,000/- i.e. Rs.100x12x20 and further dependancy of 54 months at Rs.5,400/- is all imaginary and without any basis. May be that applicant nos. 2 and 3 got jobs in the Police Department but nothing was brought in the cross examination where dependency would be Rs.100/- only for a limited period. Therefore, considering these important aspects and the aspects which were not being taken into account by the Tribunal, the claim of the applicant of Rs.1 lacs is required to be allowed. If at all Rs.30,000/- has already been granted and if the dependancy is raised to the actual amount after deducting 1/3rd income then claim would come to more than Rs.1 lacs but counsel for the appellant has restricted claim to Rs.1 lac only.

7. So far as interest part is concerned he contended that the MACT should have granted interest from the date of the application but it is granted from July 1988. He drew my attention to paragraph 13 where it has been observed that the application

was filed on 30.9.1982, it was required to be reconstructed and it was reconstructed on 30.4.1986. He has therefore contended that if the record is lost or misplaced in the court, the appellants should not have been hold responsible for that. There is strong force in the submissions.

8. For all the aforesaid reasons, I pass the following order :

ORDER

Appeal is allowed. Respondent Nos. 1 and 2 to pay jointly and severally to the applicants an amount of Rs.1,00,000/- (Rupees One lac) with interest at the rate of 10% per annum from the date of the application i.e. 30th September 1982 and pay costs all throughout.

13.1.2005 (D.G. DESHPANDE,J.)